

### **REMARKS**

This Amendment is in response to the Office Action mailed February 14, 2006.

Claims 1, 3-6, 14, 16-19 and 27 are pending and stand rejected.

Claims 1, 14 and 27 have been amended.

In view of the amendments and the arguments presented herein, Applicants respectfully request reconsideration, removal of all claim rejections for any pending claims, and allowance of those same pending claims.

Claims 16-19 are objected to under 37 CFR 1.75(c) as being in an improper form.

Applicant thanks the examiner for his observation and has amended dependent claim 16, to recite that this claim depends from independent claim 14 and not cancelled dependent claim 13.

For at least this reason, applicant believes that the reason for the objection has been overcome and respectfully requests that the objection be withdrawn.

With regard to claims 17-19, no amendments are necessary as these claims depend from claim 16 and are believed to be an allowable form in view of the amendment to claim 16.

For at least this reason, applicant believes that the reason for the objection has been overcome and respectfully requests that the objection be withdrawn.

Claims 1, 3-6, 14, 16-19, and 27 have been rejected under 103(a) as being unpatentable over USP no. 6,697,823 to Otsuka et al. (Otsuka) in view of USP no. 5,778,395 to Whiting, which is the same reason for rejecting the claims recited in the prior Office Action. The instant Office Action, in response to the applicant's remarks made in applicant's response to the prior

Office Action, states “Examiner believes that Otsuka teaches this feature [interface is created using data structures created by the execution of selected ones of a plurality of function calls]. Otsuka teaches that the interface creates data structures (see fig. 14A-14C, particularly in fig. 14B) that executed by one of a plurality of functions calls (arrow signs, ‘Determination’ and ‘Cancel’ buttons, see fig. 14B).”

Applicant respectfully disagrees with and explicitly traverses the reason for rejecting the claims. However, in the interest of advancing the prosecution of this matter, the independent claims have been amended to recite the invention claimed more specifically. Claims 1, 14 and 27 have been amended to recite that the “interface is created dynamically using data structures created by the execution of selected ones of a plurality of software functions calls, said function calls executing code associated with backup and/or restore operations. No new matter has been added. Support for the amendment may be found on at least page 12, lines 11-15, which state in part, “[t]he logic 207 and 206a-b ... are each computer program code ...” and page 16, line 6, which state “invention allow creation and display of a set of dialog boxes on the fly ...”

Otsuka discloses a computer system having a backup function. Otsuka discloses using a public terminal connected to a public telephone management company through the telephone line and each user can use the public terminal by loading a disk owned by the user. Otsuka further discloses, in Figs. 12A, 12B, 13, and 14A-14C, a user interface that enables the user to dial a telephone number (Fig. 12A), interface with the backup system (Fig. 14A) and to provide an indication of the level of backup (Fig. 14C).

However, contrary to the statements made in the Office Action, the interface of Otsuka is specific to the operation of and fixed to the Otsuka device. See for example, col. 21, lines 40-45,

which state, in part, “Fig. 12A shows an example, for the purpose of making the user recognize that the public terminal can be used as a public telephone, of a push dial display is shown, and for the purpose of making the user recognize that the public terminal can be used as a computer terminal, a computer use select display is shown.” And, col. 22, lines 38-42, which state “[a]n example of a backup level selecting screen in this case is shown in FIG. 14C. That is, the backup operation contents of the backup level LV1 to LV5 of FIG. 9 are displayed on the screen so that user can select one by a touch operation.”

Hence, Otsuka teaches the use of a graphic user interface for providing a means to enter data into the telephone or computer system. The interface is fixed for the particular system described by the Otsuka. Otsuka fails to teach or suggest that the interface is dynamically created using data structures created by the execution of selected ones of a plurality of software function calls, the function calls executing code associated with backup and/or restore operations, as is recited in the claims. Otsuka is totally silent with regard to dynamically creating the interface by the execution of software functions that create data structures that are used by the interface. Rather, Otsuka provides a preset interface for the type of telephone system that is described.

Whiting discloses a system for backing up files from disk volumes on multiple nodes of a computer network. As part of the backup process, duplicate files may be identified across nodes, so that only a single copy of the contents of the duplicate files is stored in the backup storage means. (See Abstract). During the backup process, Whiting discloses that “the backup software searches through a global directory database for a matching file. The global directory data base is created and maintained by the Agent process ... Each time the Agent migrates a backup set

from [one directory to a second directory], it searches for new and updated files in the backup set and adds them to the global directory database.” (see col. 8, lines 8-18). Hence, although Whiting discloses the concept of databases, these databases are associated with the storing of data and do not include software function calls that are part of an application program interface and execute code for dynamically generating an interface using data structures, as is recited in the claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teachings or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant’s disclosure. MPEP 2143, Rev. 2, May 2004 (cite omitted).

In this case, Otsuka teaches a fixed interface to enable a user to use the device described and provides no motivation to include an interface created using databases generated by software function calls. Rather, Otsuka provides for a fixed interface that enables a user to select whether a telephone or computer interface is desired and when a desired interface is selected an appropriate corresponding fixed interface is provided. Whiting is silent with regard to creating the interface. In fact, while Whiting teaches database these databases are associated with storing data and not created by function calls.

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Hence, Otsuka provides no motivation to incorporate a database in the interface function and the combination of Otsuka and Whiting fails to teach or suggest all the elements recited in the claims.

For at least this reason, applicant submits that the reason for the rejection has been overcome and respectfully requests that the rejection be withdrawn.

With regard to the remaining independent claims, these claims recited subject matter similar to that recited in claim 1 and have been amended in a manner similar to that made to claim 1. Hence, for the amendments made to the independent claims and for the remarks made with regard to claim 1, which are applicable to the remaining independent claims and repeated, as if in full, herein, it is submitted that the reason for rejecting these claims has been overcome and respectfully requests that the rejection be withdrawn.

With regard to the remaining dependent claims, these claims depend from the independent claims, which have been shown not to be obvious in view of the cited references. According, the remaining dependent claims are believed not obvious by virtue of their dependency upon an allowable base claim.

In view of the foregoing, the applicant believes that the application is in condition for allowance and respectfully requests favorable reconsideration and allowance of all the claims.

Although the instant Office Action has been deemed Final, it is respectfully requested that the amendments to the claims be entered.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney.


Please charge all fees occasioned by this submission to Deposit Account No. **05-0889**.

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Respectfully submitted,

Dated: \_\_\_\_\_

4/26/02



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